

LEGALITIES & ENGAGING YOUR BOARD OF DIRECTORS

SHAWN CALLAWAY & SUZI PAGEL



MUST HAVES...

Document	Explanation	Why is it important?
501(c)(3) Documentation	Federal tax law provides tax benefits to nonprofit organizations recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The Determination letter is confirmation that your organization is recognized as exempt by the IRS.	Documentation of your recognition by the IRS as a tax exempt organization is required by most donors.
Certificate of Formation	Legal organizing document in the State of Texas. Formerly called the Articles of Incorporation	Documentation of your status as a legal business in compliance with Texas Business Organization Code.
Registered Agent	Nonprofits must designate a person who will represent the organization and receive all written notices on behalf of the organization. The physical address of that individual must also be provided.	Required by the Texas Business Organizations Code so that any process, notice, or demand required or permitted by law can be served on the entity.
EIN	Employee Identification Number	Assigned by the IRS for the purpose of tax administration.
Bylaws	The written rules for conduct of a corporation or organization.	Guidelines for decisions and policy.
990	The public record information tax return that all public charities are required to submit to the IRS.	If the 990 is not filed for 3 consecutive years, nonprofit status will be revoked.
Payroll Taxes/ Other Taxes	Sales tax is collected on any items sold outside of two tax free days. Payroll taxes must be paid if the nonprofit has employees.	Individuals serving on the nonprofit board can be liable if payroll taxes are not paid. Failure to pay sales tax can result in penalties and loss of nonprofit status.

SHOULD HAVES...

Document	Explanation	Why is it important?
Memorandum of Understanding	A legal document outlining the terms, expectations and details of an agreement between parties, including each party's requirements and responsibilities.	Set forth between school district and foundation to outline each entity's responsibilities.
D&O Liability Insurance	Typically protects directors of the board and the foundation itself against damages, judgments; or allocations awarded resulting from a "wrongful act."	Several recent examples of lawsuits against a district naming the foundation as well.
Financial Guidelines	Guide and inform board members about the management of the foundation's finances	Provides guidance and consistency for the future and can help prevent fraud.
Investment Policy	Guide and inform board members about the objectives and guidelines of the foundations investment management.	Provides guidance and consistency for the future. Also provides guidelines for conservative investment practices to protect endowment funds.

RECOMMENDED...

Document	Explanation	Why is it important?
Conflict of Interest Policy	Protects the tax-exempt interest of the foundation when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the foundation.	Donors are assured that there is no self-dealing. Transparency is a key element in donor trust.
Gift Acceptance Policy	Guide as to what constitutes a gift and how they are accepted by the Foundation.	Can protect the nonprofit from averse risks. Also can provide a neutral reason for not taking a gift that has emotional significance for the donor.
Whistleblower Policy	A written policy that encourages people to report any concerns about the actions of anyone associated with Board governance without fear of retaliation.	The Board is practicing sound governance and exercising prudent risk management by having this policy in effect.
Document Destruction Policy	This policy outlines the process for deciding which documents to destroy, which to retain, and how long to retain them.	The Board is practicing sound government and exercising prudent risk management by having this policy in place.
Cash Handling/Processing Policy	The policy outlines the process for the receipt of cash gifts.	This policy documents the system that the organization utilizes when payments are received. Auditors can review to determine if the appropriate GAAP principles are in place.

Although the authors have gone to great lengths to make sure our information is accurate and useful, we recommend you consult an attorney and/or accountant if you want professional assurance that this information and your interpretation of it is appropriate to your particular situation.

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